

AMENDED IN ASSEMBLY AUGUST 7, 2014
AMENDED IN ASSEMBLY SEPTEMBER 3, 2013
AMENDED IN ASSEMBLY JUNE 27, 2013
AMENDED IN SENATE MAY 28, 2013
AMENDED IN SENATE MAY 8, 2013

SENATE BILL

No. 473

Introduced by Senator Block
(Coauthor: Senator Anderson)
(Coauthors: Assembly Members Chávez and Waldron)

February 21, 2013

An act to amend Section 186.22 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 473, as amended, Block. Human trafficking.

Existing law, as amended by Proposition 21, as approved by the voters at the March 7, 2000, statewide primary election, provides that any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished, as specified. Existing law defines "a pattern of criminal gang activity" as the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of, 2 or more listed offenses. Proposition 21 may be amended by a statute passed by a $\frac{2}{3}$ vote of the membership of each house of the Legislature.

This bill would add human trafficking as offenses that may be used to establish a pattern of criminal gang activity. Because this bill would amend Proposition 21, the bill requires a $\frac{2}{3}$ vote.

Because this bill would change the definition of a crime and require a higher level of service from local prosecutors in pleading and proving the enhancement, it would impose a state-mandated local program.

The bill would also correct cross-references and make conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.22 of the Penal Code, as amended
2 by Section 1 of Chapter 508 of the Statutes of 2013, is amended
3 to read:

4 186.22. (a) ~~Any~~A person who actively participates in any
5 criminal street gang with knowledge that its members engage in
6 or have engaged in a pattern of criminal gang activity, and who
7 willfully promotes, furthers, or assists in any felonious criminal
8 conduct by members of that gang, shall be punished by
9 imprisonment in a county jail for a period not to exceed one year,
10 or by imprisonment in the state prison for 16 months, or two or
11 three years.

12 (b) (1) Except as provided in paragraphs (4) and (5), ~~any~~ a
13 person who is convicted of a felony committed for the benefit of,
14 at the direction of, or in association with any criminal street gang,
15 with the specific intent to promote, further, or assist in any criminal
16 conduct by gang members, shall, upon conviction of that felony,
17 in addition and consecutive to the punishment prescribed for the
18 felony or attempted felony of which he or she has been convicted,
19 be punished as follows:

20 (A) Except as provided in subparagraphs (B) and (C), the person
21 shall be punished by an additional term of two, three, or four years
22 at the court's discretion.

1 (B) If the felony is a serious felony, as defined in subdivision
2 (c) of Section 1192.7, the person shall be punished by an additional
3 term of five years.

4 (C) If the felony is a violent felony, as defined in subdivision
5 (c) of Section 667.5, the person shall be punished by an additional
6 term of 10 years.

7 (2) If the underlying felony described in paragraph (1) is
8 committed on the grounds of, or within 1,000 feet of, a public or
9 private elementary, vocational, junior high, or high school, during
10 hours in which the facility is open for classes or school-related
11 programs or when minors are using the facility, that fact shall be
12 a circumstance in aggravation of the crime in imposing a term
13 under paragraph (1).

14 (3) The court shall select the sentence enhancement which, in
15 the court's discretion, best serves the interests of justice and shall
16 state the reasons for its choice on the record at the time of the
17 sentencing in accordance with the provisions of subdivision (d) of
18 Section 1170.1.

19 (4) ~~Any~~A person who is convicted of a felony enumerated in
20 this paragraph committed for the benefit of, at the direction of, or
21 in association with any criminal street gang, with the specific intent
22 to promote, further, or assist in any criminal conduct by gang
23 members, shall, upon conviction of that felony, be sentenced to
24 an indeterminate term of life imprisonment with a minimum term
25 of the indeterminate sentence calculated as the greater of:

26 (A) The term determined by the court pursuant to Section 1170
27 for the underlying conviction, including any enhancement
28 applicable under Chapter 4.5 (commencing with Section 1170) of
29 Title 7 of Part 2, or any period prescribed by Section 3046, if the
30 felony is any of the offenses enumerated in subparagraph (B) or
31 (C) of this paragraph.

32 (B) Imprisonment in the state prison for 15 years, if the felony
33 is a home invasion robbery, in violation of subparagraph (A) of
34 paragraph (1) of subdivision (a) of Section 213; carjacking, as
35 defined in Section 215; a felony violation of Section 246; or a
36 violation of Section 12022.55.

37 (C) Imprisonment in the state prison for seven years, if the
38 felony is extortion, as defined in Section 519; or threats to victims
39 and witnesses, as defined in Section 136.1.

(5) Except as provided in paragraph (4), ~~any~~ a person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) ~~Any~~ A person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with ~~any~~ a criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in a state prison for one, two, or three years, provided that ~~any~~ a person sentenced to imprisonment in ~~the~~ a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, “pattern of criminal gang activity” means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1, 8.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1, 8.

1 (4) The sale, possession for sale, transportation, manufacture,
2 offer for sale, or offer to manufacture controlled substances as
3 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
4 the Health and Safety Code.

5 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
6 as defined in Section 246.

7 (6) Discharging or permitting the discharge of a firearm from
8 a motor vehicle, as defined in subdivisions (a) and (b) of Section
9 ~~12034 until January 1, 2012, and, on or after that date, subdivisions~~
10 ~~(a) and (b) of Section 26100.~~

11 (7) Arson, as defined in Chapter 1 (commencing with Section
12 450) of Title 13.

13 (8) The intimidation of witnesses and victims, as defined in
14 Section 136.1.

15 (9) Grand theft, as defined in subdivision (a) or (c) of Section
16 487.

17 (10) Grand theft of any firearm, vehicle, trailer, or vessel.

18 (11) Burglary, as defined in Section 459.

19 (12) Rape, as defined in Section 261.

20 (13) Looting, as defined in Section 463.

21 (14) Money laundering, as defined in Section 186.10.

22 (15) Kidnapping, as defined in Section 207.

23 (16) Mayhem, as defined in Section 203.

24 (17) Aggravated mayhem, as defined in Section 205.

25 (18) Torture, as defined in Section 206.

26 (19) Felony extortion, as defined in Sections 518 and 520.

27 (20) Felony vandalism, as defined in paragraph (1) of
28 subdivision (b) of Section 594.

29 (21) Carjacking, as defined in Section 215.

30 (22) The sale, delivery, or transfer of a firearm, as defined in
31 ~~Section 12072 until January 1, 2012, and, on or after that date,~~
32 Article 1 (commencing with Section 27500) of Chapter 4 of
33 Division 6 of Title 4 of Part 6.

34 (23) Possession of a pistol, revolver, or other firearm capable
35 of being concealed upon the person in violation of ~~paragraph (1)~~
36 ~~of subdivision (a) of Section 12101 until January 1, 2012, and, on~~
37 ~~or after that date, Section 29610.~~

38 (24) Threats to commit crimes resulting in death or great bodily
39 injury, as defined in Section 422.

1 (25) Theft and unlawful taking or driving of a vehicle, as defined
2 in Section 10851 of the Vehicle Code.

3 (26) Felony theft of an access card or account information, as
4 defined in Section 484e.

5 (27) Counterfeiting, designing, using, or attempting to use an
6 access card, as defined in Section 484f.

7 (28) Felony fraudulent use of an access card or account
8 information, as defined in Section 484g.

9 (29) Unlawful use of personal identifying information to obtain
10 credit, goods, services, or medical information, as defined in
11 Section 530.5.

12 (30) Wrongfully obtaining Department of Motor Vehicles
13 documentation, as defined in Section 529.7.

14 (31) Prohibited possession of a firearm in violation of ~~Section~~
15 ~~12021 until January 1, 2012, and on or after that date,~~ Chapter 2
16 (commencing with Section 29800) of Division 9 of Title 4 of Part
17 6.

18 (32) Carrying a concealed firearm in violation of ~~Section 12025~~
19 ~~until January 1, 2012, and, on or after that date, Section 25400.~~

20 (33) Carrying a loaded firearm in violation of ~~Section 12031~~
21 ~~until January 1, 2012, and, on or after that date, Section 25850.~~

22 (34) *Human trafficking in violation of Section 236.1.*

23 (f) As used in this chapter, “criminal street gang” means any
24 ongoing organization, association, or group of three or more
25 persons, whether formal or informal, having as one of its primary
26 activities the commission of one or more of the criminal acts
27 enumerated in paragraphs (1) to (25), inclusive, or (31) to ~~(33);~~
28 ~~(34)~~, inclusive, of subdivision (e), having a common name or
29 common identifying sign or symbol, and whose members
30 individually or collectively engage in or have engaged in a pattern
31 of criminal gang activity.

32 (g) Notwithstanding any other law, the court may strike the
33 additional punishment for the enhancements provided in this
34 section or refuse to impose the minimum jail sentence for
35 misdemeanors in an unusual case where the interests of justice
36 would best be served, if the court specifies on the record and enters
37 into the minutes the circumstances indicating that the interests of
38 justice would best be served by that disposition.

39 (h) Notwithstanding any other ~~provision of~~ law, for each person
40 committed to the Department of Corrections and Rehabilitation,

1 Division of Juvenile Facilities for a conviction pursuant to
2 subdivision (a) or (b) of this section, the offense shall be deemed
3 one for which the state shall pay the rate of 100 percent of the per
4 capita institutional cost of the Department of Corrections and
5 Rehabilitation, Division of Juvenile Facilities, pursuant to Section
6 ~~912.5 of the Welfare and Institutions Code.~~

7 (i) In order to secure a conviction or sustain a juvenile petition,
8 pursuant to subdivision (a) it is not necessary for the prosecution
9 to prove that the person devotes all, or a substantial part, of his or
10 her time or efforts to the criminal street gang, nor is it necessary
11 to prove that the person is a member of the criminal street gang.
12 Active participation in the criminal street gang is all that is
13 required.

14 (j) A pattern of gang activity may be shown by the commission
15 of one or more of the offenses enumerated in paragraphs (26) to
16 (30), inclusive, of subdivision (e), and the commission of one or
17 more of the offenses enumerated in paragraphs (1) to (25),
18 inclusive, or (31) to ~~(33); (34)~~, inclusive, of subdivision (e). A
19 pattern of gang activity cannot be established solely by proof of
20 commission of offenses enumerated in paragraphs (26) to (30),
21 inclusive, of subdivision (e), alone.

22 (k) This section shall remain in effect only until January 1, 2017,
23 and as of that date is repealed, unless a later enacted statute, that
24 is enacted before January 1, 2017, deletes or extends that date.

25 *SEC. 2. Section 186.22 of the Penal Code, as amended by*
26 *Section 2 of Chapter 508 of the Statutes of 2013, is amended to*
27 *read:*

28 186.22. (a) ~~Any~~ A person who actively participates in any
29 criminal street gang with knowledge that its members engage in
30 or have engaged in a pattern of criminal gang activity, and who
31 willfully promotes, furthers, or assists in any felonious criminal
32 conduct by members of that gang, shall be punished by
33 imprisonment in a county jail for a period not to exceed one year,
34 or by imprisonment in the state prison for 16 months, or two or
35 three years.

36 (b) (1) Except as provided in paragraphs (4) and (5), ~~any~~ a
37 person who is convicted of a felony committed for the benefit of,
38 at the direction of, or in association with any criminal street gang,
39 with the specific intent to promote, further, or assist in any criminal
40 conduct by gang members, shall, upon conviction of that felony,

1 in addition and consecutive to the punishment prescribed for the
2 felony or attempted felony of which he or she has been convicted,
3 be punished as follows:

4 (A) Except as provided in subparagraphs (B) and (C), the person
5 shall be punished by an additional term of two, three, or four years
6 at the court's discretion.

7 (B) If the felony is a serious felony, as defined in subdivision
8 (c) of Section 1192.7, the person shall be punished by an additional
9 term of five years.

10 (C) If the felony is a violent felony, as defined in subdivision
11 (c) of Section 667.5, the person shall be punished by an additional
12 term of 10 years.

13 (2) If the underlying felony described in paragraph (1) is
14 committed on the grounds of, or within 1,000 feet of, a public or
15 private elementary, vocational, junior high, or high school, during
16 hours in which the facility is open for classes or school-related
17 programs or when minors are using the facility, that fact shall be
18 a circumstance in aggravation of the crime in imposing a term
19 under paragraph (1).

20 (3) The court shall order the imposition of the middle term of
21 the sentence enhancement, unless there are circumstances in
22 aggravation or mitigation. The court shall state the reasons for its
23 choice of sentencing enhancements on the record at the time of
24 the sentencing.

25 (4) ~~Any~~ A person who is convicted of a felony enumerated in
26 this paragraph committed for the benefit of, at the direction of, or
27 in association with any criminal street gang, with the specific intent
28 to promote, further, or assist in any criminal conduct by gang
29 members, shall, upon conviction of that felony, be sentenced to
30 an indeterminate term of life imprisonment with a minimum term
31 of the indeterminate sentence calculated as the greater of:

32 (A) The term determined by the court pursuant to Section 1170
33 for the underlying conviction, including any enhancement
34 applicable under Chapter 4.5 (commencing with Section 1170) of
35 Title 7 of Part 2, or any period prescribed by Section 3046, if the
36 felony is any of the offenses enumerated in subparagraph (B) or
37 (C) of this paragraph.

38 (B) Imprisonment in the state prison for 15 years, if the felony
39 is a home invasion robbery, in violation of subparagraph (A) of
40 paragraph (1) of subdivision (a) of Section 213; carjacking, as

1 defined in Section 215; a felony violation of Section 246; or a
2 violation of Section 12022.55.

3 (C) Imprisonment in the state prison for seven years, if the
4 felony is extortion, as defined in Section 519; or threats to victims
5 and witnesses, as defined in Section 136.1.

6 (5) Except as provided in paragraph (4), ~~any~~ a person who
7 violates this subdivision in the commission of a felony punishable
8 by imprisonment in the state prison for life shall not be paroled
9 until a minimum of 15 calendar years have been served.

10 (c) If the court grants probation or suspends the execution of
11 sentence imposed upon the defendant for a violation of subdivision
12 (a), or in cases involving a true finding of the enhancement
13 enumerated in subdivision (b), the court shall require that the
14 defendant serve a minimum of 180 days in a county jail as a
15 condition thereof.

16 (d) ~~Any~~ A person who is convicted of a public offense
17 punishable as a felony or a misdemeanor, which is committed for
18 the benefit of, at the direction of, or in association with ~~any~~ a
19 criminal street gang, with the specific intent to promote, further,
20 or assist in any criminal conduct by gang members, shall be
21 punished by imprisonment in a county jail not to exceed one year,
22 or by imprisonment in a state prison for one, two, or three years,
23 provided that ~~any~~ a person sentenced to imprisonment in ~~the~~ a
24 county jail shall be imprisoned for a period not to exceed one year,
25 but not less than 180 days, and shall not be eligible for release
26 upon completion of sentence, parole, or any other basis, until he
27 or she has served 180 days. If the court grants probation or
28 suspends the execution of sentence imposed upon the defendant,
29 it shall require as a condition thereof that the defendant serve 180
30 days in a county jail.

31 (e) As used in this chapter, “pattern of criminal gang activity”
32 means the commission of, attempted commission of, conspiracy
33 to commit, or solicitation of, sustained juvenile petition for, or
34 conviction of two or more of the following offenses, provided at
35 least one of these offenses occurred after the effective date of this
36 chapter and the last of those offenses occurred within three years
37 after a prior offense, and the offenses were committed on separate
38 occasions, or by two or more persons:

39 (1) Assault with a deadly weapon or by means of force likely
40 to produce great bodily injury, as defined in Section 245.

- 1 (2) Robbery, as defined in Chapter 4 (commencing with Section
2 211) of Title 8 of Part 1. 8.
- 3 (3) Unlawful homicide or manslaughter, as defined in Chapter
4 1 (commencing with Section 187) of Title 8 of Part 1. 8.
- 5 (4) The sale, possession for sale, transportation, manufacture,
6 offer for sale, or offer to manufacture controlled substances as
7 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
8 the Health and Safety Code.
- 9 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
10 as defined in Section 246.
- 11 (6) Discharging or permitting the discharge of a firearm from
12 a motor vehicle, as defined in subdivisions (a) and (b) of Section
13 ~~12034 until January 1, 2012, and, on or after that date, subdivisions~~
14 ~~(a) and (b) of Section 26100.~~
- 15 (7) Arson, as defined in Chapter 1 (commencing with Section
16 450) of Title 13.
- 17 (8) The intimidation of witnesses and victims, as defined in
18 Section 136.1.
- 19 (9) Grand theft, as defined in subdivision (a) or (c) of Section
20 487.
- 21 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 22 (11) Burglary, as defined in Section 459.
- 23 (12) Rape, as defined in Section 261.
- 24 (13) Looting, as defined in Section 463.
- 25 (14) Money laundering, as defined in Section 186.10.
- 26 (15) Kidnapping, as defined in Section 207.
- 27 (16) Mayhem, as defined in Section 203.
- 28 (17) Aggravated mayhem, as defined in Section 205.
- 29 (18) Torture, as defined in Section 206.
- 30 (19) Felony extortion, as defined in Sections 518 and 520.
- 31 (20) Felony vandalism, as defined in paragraph (1) of
32 subdivision (b) of Section 594.
- 33 (21) Carjacking, as defined in Section 215.
- 34 (22) The sale, delivery, or transfer of a firearm, as defined in
35 ~~Section 12072 until January 1, 2012, and, on or after that date,~~
36 ~~Article 1 (commencing with Section 27500) of Chapter 4 of~~
37 ~~Division 6 of Title 4 of Part 6.~~
- 38 (23) Possession of a pistol, revolver, or other firearm capable
39 of being concealed upon the person in violation of ~~paragraph (1)~~

1 of subdivision (a) of Section 12101 until January 1, 2012, and, on
2 or after that date, Section 29610.

3 (24) Threats to commit crimes resulting in death or great bodily
4 injury, as defined in Section 422.

5 (25) Theft and unlawful taking or driving of a vehicle, as defined
6 in Section 10851 of the Vehicle Code.

7 (26) Felony theft of an access card or account information, as
8 defined in Section 484e.

9 (27) Counterfeiting, designing, using, or attempting to use an
10 access card, as defined in Section 484f.

11 (28) Felony fraudulent use of an access card or account
12 information, as defined in Section 484g.

13 (29) Unlawful use of personal identifying information to obtain
14 credit, goods, services, or medical information, as defined in
15 Section 530.5.

16 (30) Wrongfully obtaining Department of Motor Vehicles
17 documentation, as defined in Section 529.7.

18 (31) Prohibited possession of a firearm in violation of ~~Section~~
19 ~~12021 until January 1, 2012, and, on or after that date,~~ Chapter 2
20 (commencing with Section 29800) of Division 9 of Title 4 of Part
21 6.

22 (32) Carrying a concealed firearm in violation of ~~Section 12025~~
23 ~~until January 1, 2012, and, on or after that date,~~ Section 25400.

24 (33) Carrying a loaded firearm in violation of ~~Section 12031~~
25 ~~until January 1, 2012, and, on or after that date,~~ Section 25850.

26 (34) *Human trafficking in violation of Section 236.1.*

27 (f) As used in this chapter, “criminal street gang” means any
28 ongoing organization, association, or group of three or more
29 persons, whether formal or informal, having as one of its primary
30 activities the commission of one or more of the criminal acts
31 enumerated in paragraphs (1) to (25), inclusive, or (31) to ~~(33);~~
32 ~~(34),~~ inclusive, of subdivision (e), having a common name or
33 common identifying sign or symbol, and whose members
34 individually or collectively engage in or have engaged in a pattern
35 of criminal gang activity.

36 (g) Notwithstanding any other law, the court may strike the
37 additional punishment for the enhancements provided in this
38 section or refuse to impose the minimum jail sentence for
39 misdemeanors in an unusual case where the interests of justice
40 would best be served, if the court specifies on the record and enters

1 into the minutes the circumstances indicating that the interests of
2 justice would best be served by that disposition.

3 (h) Notwithstanding any other ~~provision of law~~, for each person
4 committed to the Department of Corrections and Rehabilitation,
5 Division of Juvenile Facilities for a conviction pursuant to
6 subdivision (a) or (b) of this section, the offense shall be deemed
7 one for which the state shall pay the rate of 100 percent of the per
8 capita institutional cost of the Department of Corrections and
9 Rehabilitation, Division of Juvenile Facilities, ~~pursuant to Section~~
10 ~~912.5 of the Welfare and Institutions Code~~.

11 (i) In order to secure a conviction or sustain a juvenile petition,
12 pursuant to subdivision (a) it is not necessary for the prosecution
13 to prove that the person devotes all, or a substantial part, of his or
14 her time or efforts to the criminal street gang, nor is it necessary
15 to prove that the person is a member of the criminal street gang.
16 Active participation in the criminal street gang is all that is
17 required.

18 (j) A pattern of gang activity may be shown by the commission
19 of one or more of the offenses enumerated in paragraphs (26) to
20 (30), inclusive, of subdivision (e), and the commission of one or
21 more of the offenses enumerated in paragraphs (1) to (25),
22 inclusive, or (31) to ~~(33)~~, (34), inclusive, of subdivision (e). A
23 pattern of gang activity cannot be established solely by proof of
24 commission of offenses enumerated in paragraphs (26) to (30),
25 inclusive, of subdivision (e), alone.

26 (k) This section shall become operative on January 1, 2017.

27 ~~SECTION 1. Section 186.22 of the Penal Code, as amended~~
28 ~~by Section 2 of Chapter 361 of the Statutes of 2011, is amended~~
29 ~~to read:~~

30 ~~186.22. (a) A person who actively participates in any criminal~~
31 ~~street gang with knowledge that its members engage in or have~~
32 ~~engaged in a pattern of criminal gang activity, and who willfully~~
33 ~~promotes, furthers, or assists in any felonious criminal conduct by~~
34 ~~members of that gang, shall be punished by imprisonment in a~~
35 ~~county jail for a period not to exceed one year, or by imprisonment~~
36 ~~in the state prison for 16 months, or two or three years.~~

37 ~~(b) (1) Except as provided in paragraphs (4) and (5), a person~~
38 ~~who is convicted of a felony committed for the benefit of, at the~~
39 ~~direction of, or in association with any criminal street gang, with~~
40 ~~the specific intent to promote, further, or assist in any criminal~~

1 conduct by gang members, shall, upon conviction of that felony,
2 in addition and consecutive to the punishment prescribed for the
3 felony or attempted felony of which he or she has been convicted,
4 be punished as follows:

5 (A) Except as provided in subparagraphs (B) and (C), the person
6 shall be punished by an additional term of two, three, or four years
7 at the court's discretion.

8 (B) If the felony is a serious felony, as defined in subdivision
9 (e) of Section 1192.7, the person shall be punished by an additional
10 term of five years.

11 (C) If the felony is a violent felony, as defined in subdivision
12 (e) of Section 667.5, the person shall be punished by an additional
13 term of 10 years.

14 (2) If the underlying felony described in paragraph (1) is
15 committed on the grounds of, or within 1,000 feet of, a public or
16 private elementary, vocational, junior high, or high school, during
17 hours in which the facility is open for classes or school-related
18 programs or when minors are using the facility, that fact shall be
19 a circumstance in aggravation of the crime in imposing a term
20 under paragraph (1).

21 (3) The court shall order the imposition of the middle term of
22 the sentence enhancement, unless there are circumstances in
23 aggravation or mitigation. The court shall state the reasons for its
24 choice of sentencing enhancements on the record at the time of
25 the sentencing.

26 (4) A person who is convicted of a felony enumerated in this
27 paragraph committed for the benefit of, at the direction of, or in
28 association with any criminal street gang, with the specific intent
29 to promote, further, or assist in any criminal conduct by gang
30 members, shall, upon conviction of that felony, be sentenced to
31 an indeterminate term of life imprisonment with a minimum term
32 of the indeterminate sentence calculated as the greater of:

33 (A) The term determined by the court pursuant to Section 1170
34 for the underlying conviction, including any enhancement
35 applicable under Chapter 4.5 (commencing with Section 1170) of
36 Title 7 of Part 2, or any period prescribed by Section 3046, if the
37 felony is any of the offenses enumerated in subparagraph (B) or
38 (C) of this paragraph.

39 (B) Imprisonment in the state prison for 15 years, if the felony
40 is a home invasion robbery, in violation of subparagraph (A) of

1 paragraph (1) of subdivision (a) of Section 213; carjacking, as
2 defined in Section 215; a felony violation of Section 246; or a
3 violation of Section 12022.55.

4 (C) Imprisonment in the state prison for seven years, if the
5 felony is extortion, as defined in Section 519; or threats to victims
6 and witnesses, as defined in Section 136.1.

7 (5) Except as provided in paragraph (4), a person who violates
8 this subdivision in the commission of a felony punishable by
9 imprisonment in the state prison for life shall not be paroled until
10 a minimum of 15 calendar years have been served.

11 (e) If the court grants probation or suspends the execution of
12 sentence imposed upon the defendant for a violation of subdivision
13 (a), or in cases involving a true finding of the enhancement
14 enumerated in subdivision (b), the court shall require that the
15 defendant serve a minimum of 180 days in a county jail as a
16 condition thereof.

17 (d) A person who is convicted of a public offense punishable
18 as a felony or a misdemeanor, which is committed for the benefit
19 of, at the direction of, or in association with any criminal street
20 gang, with the specific intent to promote, further, or assist in any
21 criminal conduct by gang members, shall be punished by
22 imprisonment in a county jail not to exceed one year, or by
23 imprisonment in the state prison for one, two, or three years,
24 provided that a person sentenced to imprisonment in a county jail
25 shall be imprisoned for a period not to exceed one year, but not
26 less than 180 days, and shall not be eligible for release upon
27 completion of sentence, parole, or any other basis, until he or she
28 has served 180 days. If the court grants probation or suspends the
29 execution of sentence imposed upon the defendant, it shall require
30 as a condition thereof that the defendant serve 180 days in a county
31 jail.

32 (e) As used in this chapter, “pattern of criminal gang activity”
33 means the commission of, attempted commission of, conspiracy
34 to commit, or solicitation of, sustained juvenile petition for, or
35 conviction of two or more of the following offenses, provided at
36 least one of these offenses occurred after the effective date of this
37 chapter and the last of those offenses occurred within three years
38 after a prior offense, and the offenses were committed on separate
39 occasions, or by two or more persons:

1 ~~(1) Assault with a deadly weapon or by means of force likely~~
2 ~~to produce great bodily injury, as defined in Section 245.~~

3 ~~(2) Robbery, as defined in Chapter 4 (commencing with Section~~
4 ~~211) of Title 8.~~

5 ~~(3) Unlawful homicide or manslaughter, as defined in Chapter~~
6 ~~1 (commencing with Section 187) of Title 8.~~

7 ~~(4) The sale, possession for sale, transportation, manufacture,~~
8 ~~offer for sale, or offer to manufacture controlled substances as~~
9 ~~defined in Sections 11054, 11055, 11056, 11057, and 11058 of~~
10 ~~the Health and Safety Code.~~

11 ~~(5) Shooting at an inhabited dwelling or occupied motor vehicle,~~
12 ~~as defined in Section 246.~~

13 ~~(6) Discharging or permitting the discharge of a firearm from~~
14 ~~a motor vehicle, as defined in subdivisions (a) and (b) of Section~~
15 ~~26100.~~

16 ~~(7) Arson, as defined in Chapter 1 (commencing with Section~~
17 ~~450) of Title 13.~~

18 ~~(8) The intimidation of witnesses and victims, as defined in~~
19 ~~Section 136.1.~~

20 ~~(9) Grand theft, as defined in subdivision (a) or (c) of Section~~
21 ~~487.~~

22 ~~(10) Grand theft of any firearm, vehicle, trailer, or vessel.~~

23 ~~(11) Burglary, as defined in Section 459.~~

24 ~~(12) Rape, as defined in Section 261.~~

25 ~~(13) Looting, as defined in Section 463.~~

26 ~~(14) Money laundering, as defined in Section 186.10.~~

27 ~~(15) Kidnapping, as defined in Section 207.~~

28 ~~(16) Mayhem, as defined in Section 203.~~

29 ~~(17) Aggravated mayhem, as defined in Section 205.~~

30 ~~(18) Torture, as defined in Section 206.~~

31 ~~(19) Felony extortion, as defined in Sections 518 and 520.~~

32 ~~(20) Felony vandalism, as defined in paragraph (1) of~~
33 ~~subdivision (b) of Section 594.~~

34 ~~(21) Carjacking, as defined in Section 215.~~

35 ~~(22) The sale, delivery, or transfer of a firearm, as defined in~~
36 ~~Article 1 (commencing with Section 27500) of Chapter 4 of~~
37 ~~Division 6 of Title 4 of Part 6.~~

38 ~~(23) Possession of a pistol, revolver, or other firearm capable~~
39 ~~of being concealed upon the person in violation of Section 29610.~~

~~(24) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.~~

~~(25) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.~~

~~(26) Felony theft of an access card or account information, as defined in Section 484e.~~

~~(27) Counterfeiting, designing, using, or attempting to use an access card, as defined in Section 484f.~~

~~(28) Felony fraudulent use of an access card or account information, as defined in Section 484g.~~

~~(29) Unlawful use of personal identifying information to obtain credit, goods, services, or medical information, as defined in Section 530.5.~~

~~(30) Wrongfully obtaining Department of Motor Vehicles documentation, as defined in Section 529.7.~~

~~(31) Prohibited possession of a firearm in violation of Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.~~

~~(32) Carrying a concealed firearm in violation of Section 25400.~~

~~(33) Carrying a loaded firearm in violation of Section 25850.~~

~~(34) Human trafficking in violation of Section 236.1.~~

~~(f) As used in this chapter, “criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (34), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.~~

~~(g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.~~

~~(h) Notwithstanding any other law, for each person committed to the Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed~~

1 one for which the state shall pay the rate of 100 percent of the per
2 capita institutional cost of the Division of Juvenile Facilities,
3 pursuant to Section 912.5 of the Welfare and Institutions Code.

4 (i) In order to secure a conviction or sustain a juvenile petition,
5 pursuant to subdivision (a) it is not necessary for the prosecution
6 to prove that the person devotes all, or a substantial part, of his or
7 her time or efforts to the criminal street gang, nor is it necessary
8 to prove that the person is a member of the criminal street gang.
9 Active participation in the criminal street gang is all that is
10 required.

11 (j) A pattern of gang activity may be shown by the commission
12 of one or more of the offenses enumerated in paragraphs (26) to
13 (30), inclusive, of subdivision (e), and the commission of one or
14 more of the offenses enumerated in paragraphs (1) to (25),
15 inclusive, or (31) to (34), inclusive, of subdivision (e). A pattern
16 of gang activity cannot be established solely by proof of
17 commission of offenses enumerated in paragraphs (26) to (30),
18 inclusive, of subdivision (e), alone.

19 (k) This section shall become operative on January 1, 2014.

20 SEC. 2.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.